



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2013-BT-TP-0044]

RIN: 1904-AD06

Energy Conservation Program: Compliance Date for the Dehumidifier Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing a final rule that will require manufacturers to test dehumidifiers using the active mode provisions in the test procedure for dehumidifiers currently found in DOE regulations to determine compliance with the existing energy conservation standards. The appendix in its entirety will be required for use by manufacturers that make representations of standby mode or off mode energy use, and, after the compliance date for any amended energy conservation standards enacted in the future that incorporate measures of standby mode and off mode energy use, to demonstrate compliance with such amended standards. The amendments in this final rule modify the compliance dates to allow use of the ANSI/AHAM DH-1-2008 in the near term.

DATES: The effective date of this rule is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain

publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The docket, which includes Federal Register notices, comments, and other supporting documents/materials, is available for review at [regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at:

<http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0044>. This web page will contain a link to the docket for this rule on the [regulations.gov](http://www.regulations.gov) site. The [regulations.gov](http://www.regulations.gov) web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. E-mail: dehumidifiers@ee.doe.gov.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-7796.
E-mail: elizabeth.kohl@hq.doe.gov.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; “EPCA” or “the Act”) sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112-210 (Dec. 18, 2012).) Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the “Energy Conservation Program

for Consumer Products Other Than Automobiles.” The list of “covered products” under EPCA includes dehumidifiers, which are the subject of today’s rule. 42 U.S.C. 6292(a)(11).

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of products must use to: (1) ensure that their products meet the applicable energy conservation standards adopted under EPCA; and (2) make representations about the efficiency of those products. DOE must use the test procedures to ensure compliance with DOE’s energy conservation standards. 42 U.S.C. 6295(s)

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under section 6293 must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

The Energy Policy Act of 2005 (EPACT) amended EPCA to specify that the dehumidifier test criteria used under the ENERGY STAR¹ program in effect as of January 1, 2001, must serve as the basis for the DOE test procedure for dehumidifiers, unless revised by DOE. (EPACT, section 135(b); 42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria required that the Canadian Standards Association (CAN/CSA) standard CAN/CSA-C749-1994 (R2005), “Performance of Dehumidifiers,” be used to calculate the energy factor (EF) and that ANSI/AHAM Standard DH-1, “Dehumidifiers,” be used to measure capacity. The ENERGY STAR test criteria did not specify which version of ANSI/AHAM Standard DH-1, “Dehumidifiers,” was to be used, although the version in effect on January 1, 2001, was ANSI/AHAM DH-1-1992. DOE adopted these test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers at 10 Code of Federal Regulations (CFR) part 430, subpart B, appendix X in 2006. 71 FR 71340, 71347, 71366, 713667–68 (Dec. 8, 2006).

On October 31, 2012, DOE published a final rule to establish a new test procedure for dehumidifiers that references ANSI/AHAM Standard DH-1-2008, “Dehumidifiers,” (ANSI/AHAM DH-1-2008) rather than the ENERGY STAR test criteria for both energy use and capacity measurements. 77 FR 65995 (Oct. 31, 2012). The final rule also adopted standby and off mode provisions that satisfy the requirement in the Energy Independence and Security Act of 2007 (EISA) for DOE to include measures of standby mode and off mode energy consumption in its test procedures for residential products, if technically feasible. (42 U.S.C.6295(gg)(2)(A)) This new DOE test procedure, codified at 10 CFR part 430, subpart B, appendix X1 (“appendix X1”), establishes a new metric, integrated energy factor (IEF), which incorporates measures of active mode, standby mode, and off mode energy use. Appendix X1 is not currently required to

¹ For more information, please visit <http://www.energystar.gov/>.

demonstrate compliance with energy conservation standards, but would be required after the compliance date of any amended standards that include standby mode and off mode energy consumption. Manufacturers may currently use the test procedure set forth in either appendix X or appendix X1 to make representations related to active mode energy consumption of dehumidifiers; however, manufacturers are required to use the test procedure set forth in appendix X1 to make any representations related to standby mode and off mode energy consumption.

On October 22, 2013, DOE published a NOPR (“October 2013 NOPR”) proposing to require manufacturers to test using the active mode provisions in appendix X1 to determine compliance with the existing energy conservation standards. DOE determined that the active mode provisions of appendix X1 are the functional equivalent of the active mode provisions of appendix X. In addition, appendix X1 in its entirety would be required for use by manufacturers that make representations of standby mode or off mode energy use, and, after the compliance date for any amended energy conservation standards that incorporate standby mode or off mode energy use, to demonstrate compliance with those standards. In addition, 30 days after publication of the final rule in the Federal Register, the existing appendix X would be removed from the Federal Register, and appendix X1 would be re-designated as appendix X. 78 FR 62488 (Oct. 22, 2013).

II. Discussion

In the October 2013 NOPR, DOE stated that although manufacturers may currently test dehumidifiers using the test procedure set forth in either appendix X or appendix X1 to determine compliance with existing energy conservation standards and to make representations

related to active mode energy consumption, DOE believes that manufacturers and test laboratories typically use ANSI/AHAM DH-1-2008 for such purposes, consistent with the requirements of appendix X1. DOE further noted that the use of the current version of ANSI/AHAM DH-1 is required to be used for other industry testing purposes, such as for the AHAM dehumidifier verification program, and at this time ANSI/AHAM DH-1-2008 is the current version. In addition, appendix X is functionally equivalent to the active mode provisions of appendix X1. 78 FR 62488, 62488 (Oct. 22, 2013).

Therefore, DOE proposed in the October 2013 NOPR that, as of 30 days after publication of the final rule, manufacturers would demonstrate compliance with existing energy conservation standards using appendix X1 (re-designated as appendix X) and that appendix X would no longer be used and would be removed from the Federal Register. DOE also proposed to clarify that, to preclude unnecessary testing burden, manufacturers that do not make representations with respect to standby mode and off mode energy consumption may perform only the active mode test provisions when testing to determine compliance with existing standards. Manufacturers would have 180 additional days to make any changes needed to representations, including labels, certification reports, marketing materials, etc., although DOE did not expect any modifications would be needed because the proposal would not change measured energy consumption. Finally, DOE proposed to amend the test procedures at 10 CFR 430.23(z) to require that EF, when measured, be determined according to the relevant active mode provisions of appendix X1 (re-designated as appendix X), and IEF, when measured, be determined according to appendix X1 (re-designated as appendix X) in its entirety. Id.

In response to the October 2013 NOPR, AHAM expressed support for DOE’s proposal to require the use of the active mode provisions of appendix X1 to determine compliance with existing energy conservation standards. According to AHAM, current practice is to test according to ANSI/AHAM DH-1-2008. In addition, AHAM agreed that appendix X is functionally equivalent to the active mode provisions of appendix X1, and that the proposal would not be expected to cause changes in measured dehumidifier energy efficiency. (AHAM, No. 2 at p. 2)² AHAM also submitted suggested clarifications to the active mode provisions in appendix X1 related to control settings and psychrometer requirements. DOE will address such proposals in a separate rulemaking. In consideration of this support and for the reasons discussed previously, DOE adopts in this final rule the amendments that were proposed in the October 2013 NOPR.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

² A notation in the form “AHAM, No. 2 at p. 2” identifies a written comment: (1) made by the Association of Home Appliance Manufacturers; (2) recorded in document number 2 that is filed in the docket of the residential dehumidifier test procedure rulemaking (Docket No. EERE–2013– BT–TP–0044) and available for review at www.regulations.gov; and (3) which appears on page 2 of document number 2.

B. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: <http://energy.gov/gc/office-general-counsel>.

DOE reviewed today’s final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335211, “Electric Housewares and Household Fan Manufacturing,” which applies to dehumidifier manufacturers, is 750 employees.

Most of the manufacturers supplying residential dehumidifiers are large multinational corporations. DOE surveyed the AHAM member directory to identify manufacturers of residential dehumidifiers. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a "small business manufacturing facility" and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified five small businesses that manufacture residential dehumidifiers.

Today's final rule amends DOE's test procedures for dehumidifiers by requiring use of the procedures at appendix XI (re-designated as appendix X), which DOE understands is consistent with current industry practice. These procedures require use of an updated industry dehumidifier test method, which may potentially require manufacturers to install a larger test chamber and different air handling equipment. However, many manufacturers may already be using ANSI/AHAM DH-1-2008 in certifying their products. DOE notes that one of the small businesses has products listed in AHAM's current dehumidifier database of verified products, indicating that those tests were conducted according to DH-1-2008. In addition, AHAM selected an independent test laboratory to conduct dehumidifier testing and verification for its certification program using DH-1-2008. It is likely that this laboratory also performs testing for manufacturers to determine compliance with energy conservation standards in the same facility as the AHAM verification testing. Therefore, DOE concluded in the October 2012 final rule that established these procedures that small businesses will not be likely to require investments in facility upgrades due to the requirement to use the DOE dehumidifier test procedure that references DH-1-2008.

For these reasons, DOE concludes and certifies that today's final rule requiring earlier use of these procedures, consistent with current industry practice, will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential dehumidifiers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for dehumidifiers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dehumidifiers. (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for dehumidifiers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have

Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in

sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. No. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined today’s final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today’s regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule

authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. DOE required the use of a commercial standard (DH-1-2008) in the October 2012 final rule. This rule requires earlier use of the October 2012 test procedures in this rulemaking, but does not require the use of a commercial standard, so these requirements do not apply.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on January 29, 2014.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE amends part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430--ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

2. Section 430.3 is amended by removing “X1” from paragraphs (h)(1) and (o)(4) and adding “X” in its place.

3. Section 430.23 is amended by revising paragraph (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

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(z) Dehumidifiers. (1) When measuring the energy factor for dehumidifiers (see the note at the beginning of appendix X to this subpart), expressed in liters per kilowatt hour (L/kWh), energy factor shall be measured in accordance with section 4.1 of appendix X to this subpart.

(2) When measuring the integrated energy factor for dehumidifiers (see the note at the

beginning of appendix X to this subpart), expressed in L/kWh, integrated energy factor shall be determined according to paragraph 5.2 of appendix X to this subpart.

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Appendix X to Subpart B of Part 430—[Removed]

4. Appendix X to subpart B of part 430 is removed.

Appendix X1 to Subpart B of Part 430—[Redesignated as Appendix X]

5. Appendix X1 to subpart B of part 430 is redesignated as appendix X.
6. Redesignated appendix X to subpart B of part 430 is amended by revising the Note after the heading to read as follows:

**APPENDIX X TO SUBPART B OF PART 430—UNIFORM TEST METHOD FOR MEASURING THE
ENERGY CONSUMPTION OF DEHUMIDIFIERS**

Note: After **[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER]**, any representations made with respect to the energy use or efficiency of dehumidifiers must be made in accordance with the results of testing pursuant to this appendix. After this date, if a manufacturer elects to make representations with regard to standby mode and off mode energy consumption, then testing must also include the provisions of this appendix related to standby mode and off mode energy consumption.

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[FR Doc. 2014-02355 Filed 02/06/2014 at 8:45 am; Publication Date: 02/07/2014]